85-228

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LINDA LASSITER-GEERS,

Petitioner,

v.

GEORGE RICHARD REICHENBACH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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QUESTION PRESENTED

When parents are unable to agree on a last name for their child, does a court's imposition of the father's surname establish an arbitrary preference in favor of fathers and create an unconstitutional gender-based discrimination against mothers, when the basis for that order is a belief that the child using her mother's name will be considered illegitimate?

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OPINION BELOW

The Opinion of the Court of Appeals of Maryland dated May 14, 1985, affirming the Judgment of the Circuit Court for Baltimore County, Maryland, is reported at 303 Md. 88, 492 A.2d 303

(1985), and is reproduced as Appendix A hereto.

JURISDICTION

The opinion of the Court of Appeals of Maryland was filed on May 14, 1985, and this petition for certiorari was filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3), the text of which is set forth in Appendix B hereto.

STATEMENT OF THE CASE

Linda Lassiter-Geers ("Linda") and George Richard Reichenbach ("George") are former husband and wife who voluntarily separated on or about June 1, 1980. The parties learned shortly thereafter that Linda was pregnant. On June 23, 1980, Linda received a letter from her husband's

attorney advising her that George was seeking a divorce. At that time, she decided to resume the use of her maiden surname, Lassiter, once the parties were divorced. (App. A at 2).

On January 17, 1981, Linda gave birth to her daughter who was given the name Jamie Lauren Lassiter ("Jamie"). There is no dispute that George is Jamie's father. Although Linda decided on her own to give the child the surname of Lassiter without consulting her husband, she believed that to be in Jamie's best interests. Linda testified that before deciding to give Jamie the surname of Lassiter, she did a lot of soul searching and spoke with an attorney, her mother, a male friend with two children, and a minister with four children. (App. A

at 3). She further testified as to the uncertainty of the situation, especially whether George would acknowledge Jamie as his daughter. (R.28). Because Linda had already decided to resume using the name Lassiter and, because she and Jamie would be living together, she believed it would be in Jamie's best interests for the two of them to share the same last name. (App. A at 3).

The parties were divorced on March 30, 1982. Among other relief, the Decree authorized Linda to resume the use of her maiden name of Linda Leslie Lassiter; awarded her guardianship and custody of Jamie; and ordered George to pay child support. The Decree further ordered "that the determination of the surname of the

minor child of the parties be and the same is hereby reserved for future determination and further Orders of this Court." (App. A at 4).

More than two years later, on April 9, 1984, George filed a Petition for Modification of Decree in the Circuit Court for Baltimore County in which he sought an order that Jamie assume his last name. George testified that he believed it was important for Jamie's last name to be changed to his name, Reichenbach, because she is his child and she should not have to go through life with a last name different from both her mother and father. (R.17,23-24). Both parties have remarried since their divorce. Linda now uses the last name Lassiter-Geers, but George still refers to her as Linda Lassiter. (R.21,27,55).

Jamie has been in the continuous care and custody of Linda since birth, and Jamie has always used the last name Lassiter. (R.28). She was baptized as Jamie Lauren Lassiter and has a Social Security card and bank account under that name. (R.29). Jamie has been registered in Sunday School and in swim class under the last name of Lassiter. (R.29). Hospital and medical records list her name as Jamie Lauren Lassiter. (R.29). She also receives mail addressed to Jamie Lassiter. (R.29). Both Linda and her next-door neighbor, who has known Jamie since birth, testified that the child identifies with the name Lassiter; that she can say, spell, and write that name. (R.29-30,37-38).

The trial court found, however, that it was not in the child's best interests to use her mother's maiden name. The Court believed that under the circumstances many people might infer that the child was illegitimate, and that inference would embarrass her. (App.A at 17-18). On October 23, 1984, the Circuit Court modified the Decree of Divorce to the end that the name of the minor child shall be "Jamie Lauren Reichenbach." Linda noted a timely appeal to the Court of Special Appeals of Maryland, but on February 25, 1985, the Court of Appeals of Maryland on its own motion issued a writ of certiorari to the Court of Special Appeals. (App. A at 5).

Linda argued before the Court of Appeals that the trial court created an unconstitutional presumption that the natural father enjoys a greater right than the natural mother to have the child bear his surname, and that the trial court's disregard of equality of rights led to a gender-based classification which denied Linda the equal protection of the laws. (See App. C). The Court of Appeals nevertheless affirmed the judgment and adopted the trial court's reasoning of what is in the best interests of the child.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals is based on an outdated stereotype of the role of mothers and fathers in our society. The opinion

below effectively announces the State's preference that a child assume the father's surname in all instances where the parents are unable to reach agreement on the issue, thereby placing a gender-based burden on females. That preference is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

When determining the surname of their child, the mother and father are members of the same class. Each parent has an equal right to have the child bear his or her respective surname. The Equal Protection Clause denies States the power to treat mothers and fathers differently in such instances.

The decision below distinguishes sharply between the sexes and

commands dissimilar treatment for men and women as parents. Such classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives. Craig v. Boren, 429 U.S. 190 (1976). But the parent's gender does not represent a legitimate, accurate proxy for determining the child's surname, just as there can be no gender-based preference in child custody determinations. Although these issues are to be decided and based upon what is in the best interests of the child, that inquiry cannot be a mere shibboleth designed to hide improper decision-making. Thus, the lower court's attempt to hide behind the shield of "best interests" cannot withstand the penetration of the

Equal Protection sword. The principles embodied in the Equal Protection Clause are not rendered inapplicable by the use of symbolic words of art. Simply saying that something is in the best interests of the child does not make it constitutional.

The State cannot avoid the strictures of the Equal Protection Clause by deferring to the hypothetical wishes or objections of some fraction of the public. The perceived fear of the stigma attached to illegitimacy is an irrational one which is traceable to long-held social and cultural beliefs. Although such prejudices cannot be controlled by the Constitution, neither can the Constitution tolerate them. Palmore v. Sidoti, ___ U.S. _____, 104 S. Ct. 1879 (1984).

Just as the Florida Court found in Palmore that "the social stigmatization that is sure to come" to a child living in a racially mixed household could not be in the best interests of the child, so the Maryland Court found that "the child being put in an embarassing situation" by public perception that she was illegitimate could not be in the best interests of the child. See id. at _____, 104 S. Ct. at 1881; App. A at 18. Both courts committed the same error.

A court "may not avoid a constitutional duty by bowing to the hypothetical effects of private [gender-based] prejudice that [is] assume[d] to be both widely and deeply held." Id. at ___, 140 S. Ct. at 1882, quoting Palmer v. Thompson, 403 U.S. 217, 260-61 (1971) (White, J.,

dissenting). Possible prejudice against illegitimate children cannot justify a gender-based classification which gives a mandatory preference to fathers, merely to further ancient and eroded notions whose existence today are largely illusory. Notwithstanding the court's attempt to bootstrap its decision by broadly proclaiming that the best interests of the child control, it is hard to imagine circumstances in which the child could ever bear the mother's surname, since in every case this would cause people to infer that the child is illegitimate.

The court did not try to hide the fact that it was basing its decision on stereotype and prejudice. This is made clear by the following portion of the trial court's opinion which was

quoted with approval by the Court of Appeals:

> The reason I feel it is not in the best interest of the child, and the child is a young child, taking into consideration the age of the child and the effect of the name change at this point, is because as this child gets older, starts going to school, making friends and so on, the child is going to find herself in a situation where someone says, what is your name. My name is Lassiter. The person says, well, your mother's name is Geers. I guess your father's name is Lassiter. What is your father's name?
>
> My father's name is Reichenbach. Where did Lassiter come from?
>
> Some people and a lot of people may well infer this child was born out of wedlock. Where did Lassiter come from? She was not married to anybody named Lassiter. The father's name is Reichenbach.
>
> It just doesn't seem right to me that it puts the child in a very good position at all. As far as the child is concerned it lends itself

> to the child being put in an embarrassing position; and I don't think that that is in the best interest of the child.
>
> Someone says, well-the child says to the person, my name is Reichenbach - I mean my father's name is Reichenbach. So therefore, the person who she gives that answer to can't help but wonder, well, why is the name not Reichenbach. Why is the name Lassiter? Is the child telling the truth because the child is trying to disguise something? It just doesn't make sense that that is in the best interest of this child to go through life under those circumstances with three possible names; and I don't think that that should exist. I don't think it is in the best interest of the child.

App. A at 17-19. The opinion does not even distinguish between legitimate and illegitimate children; hence, the decision also applies to illegitimate

children who may never even know their fathers.[1]

In recent years, antiquated notions of the proper role of women in our society have been exploded. Today, an increasing number of women use their maiden names after marriage, as well as after divorce. Accordingly, there are now many, many households where children and parents with different surnames live together. Thus, when

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[1]At least one State requires that an illegitimate child be given the mother's surname unless an affidavit of acknowledgment of paternity signed by both parents is received stating the surname of the child to be that of the father. See S.D. CODIFIED LAWS ANN. §34-25-13.3 (1977). That one State legislature believes a sound purpose is served by requiring an illegitimate child to bear the mother's surname clearly conflicts with and undermines the rationale set forth in the opinion below.

parents with different last names are unable to agree on their child's surname, the State must develop constitutionally sound procedures to resolve this increasingly important public issue.[2]

The State's concern with the family unit, the most fundamental social institution of our society, requires an even-handed focus based on considerations which promote the reality -- rather than the stereotype -- of family relationships.

For purposes of determining the surname of the child, the decision

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[2]The Court of Appeals itself recognized the "important public issue here presented" by issuing a writ of certiorari on its own motion before the intermediate appellate court considered the case. (App. A at 5).

below makes every mother bear a burden which would not exist if she were the father. The well-founded purpose to be served in such cases, i.e., determining what is in the best interests of the child, must be achieved without placing a gender-based burden on mothers. The harm done to mothers is grossly disproportionate to any purpose the decision purports to further. The arbitrary preference established in favor of fathers cannot withstand scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,

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Dated: August 9, 1985

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

No. 154

September Term, 1984

LINDA LASSITER - GEERS,

Appellant,

v.

GEORGE RICHARD REICHENBACH

Appellee.

Argued before MURPHY, C.J., and SMITH, ELDRIDGE, COLE, RODOWSKY, COUCH AND McAULIFFE, J.J.

Thomas C. Ries, Baltimore (Ann M. Turnbull and Frank, Bernstein, Conaway & Goldman, Baltimore, on the brief), for Appellant.

Myles F. Friedman, Baltimore (Joel H. Pachino and Friedman, Pachino & Garcia, Baltimore, on the brief), for Appellee.

Filed: May 14, 1985

SMITH, Judge.

We shall here hold that when a father and a mother fail to agree at birth and continue to disagree upon the surname to be given their child, the question is one to be determined upon the basis of the best interest of the child.

I

The facts are not in dispute. Appellant Linda Lassiter-Geers and appellee George Richard Reichenbach formerly were husband and wife. They separated on or about June 1, 1980. Shortly thereafter they learned that Mrs. Lassiter-Geers was pregnant. She gave birth to a daughter, Jamie Lauren, on January 17, 1981. At that time Mrs. Lassiter-Geers gave their daughter her maiden name of Lassiter as a surname. She testified as to how she arrived at this decision:

> "I did a lot of soul searching. First I spoke to an attorney, to let the attorney know what I planned to do. I spoke to my mother at great length. I spoke to a male friend who has two children, and I also spoke to a minister several times. The last time I spoke to him was the day that Jamie was born. He came to the hospital to see us. He has four children, two sons and two daughters.
>
> "I wanted to do what was best for Jamie, to do what was in Jamie's best interest; and I feel that I was. I still do."

Reichenbach was not consulted. He said he did not find out about the child's surname until August 1981, some seven months later.

The parties were divorced a vinculo matrimonii by a decree of the Circuit Court for Baltimore County on March 30, 1982. Appellant was granted

the right to resume her maiden name of Lassiter. In the answer filed by Reichenbach to the supplemental bill of complaint in that proceeding, he raised the issue of the surname of the child. When the matter came in for hearing before the court master the parties agreed that the issue of the proper surname of their child should be reserved for future determination. The master recommended this to the Court. The decree specified "that the determination of the surname of the minor child of the parties be reserved for future determination and further Orders of th[at] Court ...."

On April 9, 1984, Reichenbach filed a petition in the circuit court in the divorce proceeding in which, among other things, he pointed out

that the divorce decree had reserved the issue of determination of the surname of the minor child and prayed that the court "order that the child assume the surname of [Reichenbach]." The matter came on for hearing before Judge DeWaters. He said that "the best test, as [he] s[aw] it, that has to be utilized, is what is in the best interests of the child." He went on to determine that in this particular case the best interest of the child would be for her to have the surname of her father. By the time of that hearing Mrs. Lassiter-Geers had married a gentleman by the name of Geers. She uses the surname Lassiter-Geers She promptly appealed to the Court of Special Appeals. We issued a writ of certiorari on our own motion prior to

consideration of this case by the intermediate appellate court in order that we might address the important public issue here presented. We find that the trail judge used the correct test and did not abuse his discretion in his determination. Hence, we shall affirm.

II

Mrs. Lassiter-Geers first argues that the trial court was without jurisdiction to pass the decree at issue. She says in support of this contention,

> "Maryland has enacted legislation, which is now implemented by Rules of Procedure, authorizing the change of a person's name by judicial proceeding. See Md. Rules BH 70-75. The proper method for Appellee to present the change of name issue to the Court would have been to comply

> with the BH Rules and formally file a Petition for Change of Name."

She speaks of the trial court in this instance as a "divorce court" and "the absence of any provision authorizing a Maryland divorce court to consider this issue." She errs. The issue of divorce is simply one of the matters a circuit court is authorized to consider. It is no more proper to consider or call it a "divorce court" and its jurisdiction as so limited than it is when a circuit court is considering a tort to call it a "tort court" and to regard its jurisdiction as limited to torts.[1]

---

[1]In this regard see Maryland Code (1974, 1984 Repl. Vol.) §3-603(b), Courts and Judicial Proceedings Article, stating, "A court of equity sitting in an action for divorce . . . has all the powers of a court of

Footnote con't.

The divorce action was, of course, in equity. The issue of the proper surname for the child was raised in that proceeding. Numbers of our cases have held that once a court has obtained jurisdiction over an equitable action it retains that jurisdiction to adjust and determine all rights of the parties to the proceeding. Thus, when a court has assumed such jurisdiction, ordinarily it will retain it for all purposes, deciding all the issues raised by the subject matter of the dispute between the parties and awarding complete relief, even as to matters

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Footnote con't.

equity...." and Winston v. Winston, 290 Md. 641, 431 A.2d 1330 (1981). Section 3-603(b) was replaced by Code (1984) 1-203(a), Family Law Article, to similar effect as of October 1, 1984.

over which it would not have taken jurisdiction originally, although the principle will not be extended to an unrelated controversy in which any of the parties to the original litigation is involved. See, e.g., C. W. Jackson & Associates v. Brooks, 289 Md. 658, 666, 426 A.2d 378, 382 (1981), Aiello v. Aiello, 268 Md. 513, 518, 302 A.2d 189, 191 (1973), and cases cited in each. The reason for this was explained by the Court long ago in Keighler v. Ward, 8 Md. 254 (1855):

> "[A] jurisdiction once rightfully asserted by a court of equity, and which would lead to a settlement of all the questions which might arise out of the subject matter in controversy, will exclude all jurisdiction over it, by other courts, for similar purposes, and the reason of

> this, which is to prevent a number of conflicting proceedings about the same thing, is wise and just." 8 Md. at 266.

III

Mrs. Lassiter-Geers wishes to regard this as a change-of-name case. She argues that under our holding in West v. Wright, 263 Md. 297, 283 A.2d 401 (1971), the change of name of a minor child is warranted only in extreme circumstances. She contends that the trial court improperly changed the surname of the child from Lassiter to Reichenbach. As we shall develop, because the parents did not agree upon a surname for the child, she was without a surname. Hence, we do not see this as a change-of-name case but as a case to determine what is the proper surname of the child in question.

In West, 263 Md. at 300, 283 A.2d at 402, Judge Digges observed for the Court, quoting Application of Yessner, 61 Misc.2d 174, 304 N.Y.S.2d 901, 903 (1969), "'[T]he father has a natural right to have his son bear his name and ... the court should not endeavor to interfere with the usual custom of succession of paternal surname nor foster any unnatural barrier between father and son.'" The traditional view has been that a child bears the surname of his father. See, e.g. Jech v. Burch, 466 F. Supp. 714, 717 (D. Hawaii 1979); Laks v. Laks, 25 Ariz. App. 58, 60, 540 P.2d 1277, 1279 (1975); In Re Marriage of Schiffman, 28 Cal. 3d 640, 641, 169 Cal. Rptr. 918, 919, 620 P.2d 579, 580 (1980); Burke v. Hammonds, 586 S.W.2d 307, 309

(Ky. App. 1979); Secretary of the Commonwealth v. City Clerk of Lowell, 373 Mass. 178, 189, 366 N.E.2d 717, 725 (1977); Kay v. Bell, 95 Ohio App. 520, 524, 121 N.E.2d 206, 208 (1953); Roberts v. Mosier, 35 Okla. 691, 695, 132 P. 678, 680 (1913); Petition for Change of Name of Harris, 160 W. Va. 422, 427, 236 S.E.2d 426, 429 (1977); 57 Am. Jur. 2d Names §2 at 276 (1971); 65 C.J.S. Names § 3a (1966). The first name of a child has been as selected by the child's parents. Smith v. United States Casualty Co., 19 N.Y. 420, 423, 90 N.E. 947, 948 (1910); Laflin & Rand Co. v. Steytler, 146 Pa. 434, 442, 23 A. 215, 217 (1892); 57 Am. Jur. 2d Names § 3 at 277. As to the issue before the Court see generally Annot. 92 A.L.R.3d 1091 (1979).

On the record in this case we need not decide whether any right which a father had by prior custom or

law to have a child bear his surname is eliminated by the adoption of Md. Declaration of Rights Art. 46, providing that equality of rights under the law shall not be abridged or denied because of sex. For the purposes of our decision we shall assume, without deciding, that such is the case. Certainly, however, in that situation neither parent has a superior right to determine the initial surname their child shall bear. See to that effect Application of Saxton, 309 N.W.2d 298, 301 (Minn. 1981). In Jech, 466 F. Supp. at 719, the court observed, "[A] proper interpretation of Anglo-American political and legal history and precedent leads to the conclusion that parents have a common law right to give their child any name they wish...." "In

the absence of a statute to the contrary, a person may adopt any name by which he wishes to become known, as long as he does so consistently and nonfraudulently." Hardy v. Hardy, 269 Md. 412, 415, 306 A.2d 244, 246 (1973). To similar effect see Stuart v. Board of Elections, 266 Md. 440, 446-47, 295 A.2d 223, 226 (1972), and Romans v. State, 178 Md. 588, 597, 16 A.2d 642, 646 (1940). It follows, therefore, that parents have the right jointly to adopt any surname for their child they wish to adopt, just as they determine what shall be a child's given name.

This must be a joint action, however. There was no agreement between the parties here. Mrs. Lassiter-Geers determined at birth to give the child her own maiden name as a surname.

Not only was the father not consulted, he was not even aware of this until months later. As late as the hearing before the master in the divorce proceeding the parents had been unable to agree upon a surname for their child. It is apparent that a dispute continues to exist as to the surname. That is the basis of this case. It follows, therefore, that what the chancellor was asked to determine was not whether there should be a change of surname for this child but what the surname for the child should be. In Schiffman, 28 Cal. 3d at 647, 169 Cal. Rptr. at 922, 620 P.2d at 583 (1980), the court observed, "[T]he sole consideration when parents contest a surname should be the child's best interest." To similar effect see Fuss v. Fuss, 372

Mass. 64, 69, 368 N.E.2d 271, 274 (1977). We agree. This is in line with our holding relative to change of name in West, 263 Md. 297, 283 A.2d 401.

As we have already pointed out, the chancellor determined that the test of what is in the best interest of the child was the one to be applied. After making that determination he said orally from the bench in reaching his decision, "[T]he mother has created a situation whereby there are three possible names." He pointed out that the mother "and the child are living in the home presently where the name Geers is utilized because the mother has remarried. The child's name is Lassiter." He said that the child is young and that it is not too

late to change the name to change that situation. He specified:

> "The reason I feel it is not in the best interest of the child, and the child is a young child, taking into consideration the age of the child and the effect of the name change at this point, is because as this child gets older, starts going to school, making friends and so on, the child is to find herself in a situation where someone says, what is your name. My name is Lassiter. The person says, well, your mother's name is Geers. I guess your father's name is Lassiter. What is your father's name?
>
> "My father's name is Reichenbach. Where did Lassiter come from?
>
> "Some people and a lot of people may well infer this child was born out of wedlock. Where did Lassiter come from? She was not married to anybody named Lassiter. The father's name is Reichenbach.

"It just doesn't seem right to me that it puts the child in a very good position at all. As far as the child is concerned it lends itself to the child being put in an embarrassing position; and I don't think that that is in the best interest of the child.

"Someone says, well -- the child says to the person, my name is Reichenbach -- I mean my father's name is Reichenbach. So therefore, the person who she gives that answer to can't help but wonder, well, why is the name not Reichenbach. Why is the name Lassiter? Is the child telling the truth because the child is trying to disguise something? It just doesn't make sense that that is in the best interest of this child to go through life under those circumstances with three possible names; and I don't think that that should exist. I don't think it

> is in the best interest of the child."[2]

We believe the chancellor properly applied the best interest test to the facts of this case.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

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[2]Counsel for the appellant, in response to questions from the Court, stated emphatically more than once that the appellant did not desire a remand in this case for the purpose of having the chancellor consider any other matters which might bear upon the issue of the best interest of the child.

APPENDIX B

United States Constitution, Amendment XIV

Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 28:

§1257 State Courts; appeals; certiorari.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) by writ of certiorari . . . where any title, right, privilege or immunity especially set up or claimed under the Constitution, treaties, or statutes of, or commission

held or authority exercised under, the United States.

South Dakota Codified Laws Ann. (1977):

§34-25-13.3. Unmarried mother's surname shown on birth certificate unless paternity acknowledged.

If the mother was not married either at the time of conception or birth, the child's surname shall be shown on the birth certificate as the legal surname of the mother at the time of birth unless an affidavit of acknowledgment of paternity signed by both parents is received stating the surname of the child to be that of the father.

APPENDIX C

(EXCERPT FROM PETITIONER'S BRIEF TO THE COURT OF APPEALS OF MARYLAND)

III. APPELLEE DOES NOT ENJOY A GREATER RIGHT, AS AGAINST APPELLANT, TO HAVE THE CHILD BEAR HIS SURNAME.

The Chancellor's decision to change the child's surname to that of Appellee creates an unconstitutional presumption that the father enjoys a greater right than the mother to have the child bear his surname. (E. 49-52). There is no longer a presumption of dominance by the husband in a marriage. Bell v. Bell, 38 Md. App. 10, 379 A.2d 419(1977). Appellant may not be denied equality of rights under the law because of her sex. Maryland Constitution, Declaration of Rights, Article 46. Public policy and societal

standards have changed significantly in the last decade, and ancient views about the proper role of women no longer have any place in the law. See Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977); Rand v. Rand, 280 Md. 508, 374 A.2d 900 (1977).

Courts in other jurisdictions have held that the father does not enjoy a greater right, as against the mother, to have the child bear his surname. In In Re Marriage of Schiffman, 620 P.2d 579 (Cal. 1980), the mother was four months pregnant at the time the parties separated. Prior to the dissolution of marriage, the child was born and given the mother's maiden name. In remanding the case to the lower court for a consideration of

what would be in the child's best interests, the Supreme Court of California, sitting in bank, abolished the rule giving the father, as against the mother, a primary right to have the child bear his surname. Id. at 583. The Court further noted that the patrimonial control of surnames had virtually disappeared and that the impact a name may have on the mother-child relationship may not be ignored. Id. at 581, 583-584.

Similarly, in Jacobs v. Jacobs, 309 N.W. 2d 303 (Minn. 1981), the Supreme Court of Minnesota remanded the case to the trial court for a hearing to determine whether the changing of the child's surname was in the best interests of the child. The Jacobs court held, however, that

neither parent has a superior right to determine the initial surname of the child. Id. at 305.

The Chancellor was bound to determine that Appellant enjoys a right and interest equal to that of Appellee to have the child bear her surname. See State Ex Rel. Spence-Chapin Services v. Tedeno, 421 N.Y.S.2d 297 (N.Y. Sup. Ct. 1979); Cohee v. Cohee, 317 N.W.2d 381 (Neb. 1982). Further support may be found in Application Of Rossell By Yacono, 481 A.2d 602 (N.J. Super.L. 1984), where the mother resumed her maiden name at the time of divorce and thereafter sought to change her son's surname from that of her former husband to her maiden name. In granting the requested relief, the

Court overruled its prior decisions which had accorded the natural father a superior right to have the child bear his name, and stated:

> Names . . . are intimately involved with the status of women. Rules of law for changing names cannot be premised upon unacceptable theories of inequality. The right of a mother to have her child bear her name must be recognized as equal to that of the father.

Id. at 605.

Appellant is also guaranteed the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States. The concept of equal justice under the law requires the State to govern impartially. It means that similarly situated persons must receive similar treatment under the law. Reed v.

Reed, 404 U.S. 71, 75 (1971); Orr v. Orr, 440 U.S. 268, 278-279 (1979). Appellant may not be subjected to treatment disparate from Appellee in the absence of a substantial relation between such disparity and an important State interest. Id. Accordingly, the Chancellor's failure to apply the factors set forth by the Court of Appeals in West v. Wright and focus on Appellant's relationship with the child constitutes an abuse of discretion. By applying the references to the father of West v. Wright to the present case, although the child in question had never had her natural father's name, the Chancellor not only misunderstood the case, but also created an unconstitutional presumption that the natural father enjoys a

greater right than the natural mother to have the child bear his surname.

That women have emerged as equals of men in our society in Maryland is no longer subject to debate. See Maryland Constitution, Declaration of Rights, Article 46; Md. Family Law Code Ann., Section 5-203 (1984). Consideration of those factors which may make one name more attractive to a child than another name, and the sense of identity and bonding between a child and parent who share the same last name, apply to the mother with as much force as they apply to the father. In concentrating solely on the father's name and relationship with the child the Chancellor failed to acknowledge that Appellant has a right and interest at least equal to that of Appellee in

having the child bear her surname. (E.48-52). The Chancellor's disregard of this equality has resulted in a classification impermissibly based upon sex and denies Appellant equal protection of the law.

(3)

No. 85-228

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LINDA LASSITER-GEERS,

Petitioner,

v.

GEORGE RICHARD REICHENBACH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION ON BEHALF OF GEORGE RICHARD REICHENBACH RESPONDENT

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RESPONDENT

STATEMENT OF THE CASE

Petitioner seeks Writ of Certiorari to the Court of Appeals of Maryland to review its decision in this case reported at 303 Md. 88, 492 A. 2d 303 (1985) which affirmed the Circuit Court for Baltimore County, Maryland in holding that where parents of a minor child cannot agree on the proper surname for the minor child, the trial court shall select the surname which is in the best interests of the minor child.

STATEMENT OF FACTS

George Reichenbach, Respondent, and Linda Reichenbach, Petitioner, were married and voluntarily separated on June 1, 1980. Within three weeks thereafter, the parties learned that Petitioner was pregnant. There is no question that Mr. Reichenbach was the father of the daughter born to Petitioner on January 17, 1981.

The evidence showed and it is admitted by the Petitioner that on the day the child was born, she, without the knowledge of consent of her husband, registered the birth of the child with the State Registrar

of Vital Records as "JAMIE LAUREN LASSITER", Lassiter being the Petitioner's maiden name.

It should be noted that when Petitioner "gave" the child the surname of Lassiter, Petitioner's surname was still Reichenbach and would remain Reichenbach until March 30, 1982, when a Decree of Divorce A Vinculo Matrimonii was passed restoring Petitioner her maiden name.

Respondent said that he did not know that the Petitioner had "given" the child the surname of Lassiter until August, 1981.

Respondent testified that Petitioner had told him that she gave the child her maiden name because "that is what she wanted". Further, Respondent stated that had his wife consulted with him about the name he would not have allowed it.

When the parties were divorced the Decree awarded custody and guardianship to Appellant. Additionally, the Decree specifically provided "that the determination of the surname of the minor child of the parties be and the same is hereby reserved for future determination and further Orders of this Court..."

Petitioner remarried on June 3, 1983 and is presently Linda Lassiter-Geers.

On April 4, 1984, Respondent petitioned the Court to rule on the previously reserved question under the Decree of March 30, 1981 as to the surname of the child. Petitioner's Answer asked that the petition be dismissed.

At the time of the hearing, the minor child was three (3) years nine (9) months old.

Respondent's evidence showed that he was the natural father of the child and so listed on the birth certificate. That he had come to the hospital the day Jamie was born. That he has continuously supported the child since birth and has a healthy on-going relationship with his daughter.

Respondent stated that he wanted his daughter to bear his surname Reichenbach, and that it was in the child's best interest that she bear the name Reichenbach because of the confusion that would be caused by her living with her mother who used the name (LASSITER-GEERS), in a home where another surname was used (GEERS), and the child carrying a third name (LASSITER), none of

which were his, the natural father of the child, (REICHENBACH).

Following testimony and argument, the Chancellor found that it was in the best interests of the child that her legal surname be Reichenbach and signed an Order dated October 23, 1984 determining the child's surname as Reichenbach. Petitioner entered an appeal.

The Court of Appeals of Maryland affirmed the trial court by its opinion dated May 15, 1985 which opinion is reported at 303 Md. 88, 492 A. 2d 303. The Court of Appeals held that the lower court applied the appropriate test of "the best interests of the child", and that its application of that test was not an abuse of the trial court's discretion.

Petitioner seeks review of that decision.

REASONS FOR DENYING THE WRIT

I. The decision of the Court of Appeals of Maryland is in full accord with all decisions on this well settled point of law.

Certiorari is sought in connection with the decision of the Court of Appeals of Maryland which

affirmed the trial court. Both courts ruled: that the sole consideration when parents contest a surname should be the child's best interests.

Petitioner does not contend that the test used by the Maryland court was incorrect, unlawful or inappropriate.

Petitioner does not contend that the test used is in conflict with the test that would be applied by any sister state under similar circumstances.

In short, Petitioner agrees that the "best interest of the child" test was proper in this case.

II. The standard by which the action of the trial court was reviewd by the Court of Appeals was proper.

The Court of Appeals specifically found that the trial judge did not abuse his discretion in determining that it was in the best interest of the child that her surname be Reichenbach.

That standard of review abuse of discretion - is the same test used by the Court of Appeals of Maryland in reviewing child custody cases. Davis v. Davis 280 Md. 119, 372 A. 2d 231, cert denied 434 US 939, 98

S. Ct. 430, 54 L Ed 299 (1977) rehearing denied 434 US 1025, (1978) Christman v. O'Connor 36 Md. App. 263, 373 A. 2d 326, (1977).

Petitioner does not attack the standard of review used by the Maryland Court of Appeals as being incorrect, unlawful or inappropriate.

III. There exists in this instance no special or important reason for review by the Court.

Petitioner would have this Court believe that the trial judge ordered that the child bear the surname Reichenbach solely because the trial judge believed that were he to give the child the mother's (maiden) name people might consider that the child was illegitimate. This, Petitioner says, raises unconstitutional gender-based discrimination against Petitioner.

Respondent says the "illegitimacy aspect" was not the basis of the trial court's decision.

The trial judge had the opportunity to see the parties, to evaluate their testimony and to judge their motives. The trial judge was aware that when the parties were married they held themselves out as Mr. and

Mrs. Reichenbach. Mrs. Reichenbach did not elect to keep her maiden name at the time of the marriage. (See Stuart v. Board of Supervisors of Elections for Howard County, 266 Md. 440, 295 A. 2d 223 (1972). That when the child was conceived the parties were still married and the mother was still Mrs. Reichenbach. Even when the child was born and the mother's legal name was still Reichenbach, the mother, without consulting the father "gave" the child her maiden name "LASSITER" by inserting it on the child's birth certificate.

When the Husband confronted the Wife upon learning what she had done and asked the reason why she did this, she said because "that is what (I) wanted". The trial judge heard this testimony, as well.

The testimony showed that the mother had gone to great lengths to attempt to permanently establish the surname of Lassiter. She opened a bank account for the child in the name of Lassiter, obtained a Social Security card for the child in the name of Lassister, all at a time when the child was less than three years old. The Petitioner did these things at a time when she knew the question of the child's surname was still under contest.

All of these actions led to the trial judge's finding that:

> "[T]he mother has created a situation whereby there are three possible (sur)-names (for the child)."

Further that the trial judge was also aware that the father had not been guilty of any conduct inimical to the child which would have been the basis for denying the child the use of the name - Reichenbach. West v. Wright 263 Md. 297, 283 A. 2d 401, (1971). Rather the evidence showed that the father assured the mother that he would support the child when he learned that she was pregnant. That he visited the hospital when the child was born. That he has supported the child since birth, without any court order. That he visits the child regularly and has a loving, healthy relationship with the child.

At the time of the hearing the child was only three years and nine months old. That the trial judge believed that a "change" of name at this stage of the child's life would not be a harm to the child.

Taking all the factors into consideration, and not unaware that most children bear the surname of

their father, and, moreover, a far greater majority of children bear the surname of their father, where the child is born to parents whose legal names are the husband's surname, the trial judge found that it would be in the best interest of the child that her surname be Reichenbach because it would create less confusion for the child.

Clearly the Petitioner's statement that the sole basis for giving the child her father's surname in this case was due to unconstitutional gender-based discrimination against mothers is unjustified under the facts of this case.

CONCLUSION

The decision of which review is sought is, in all respects, in full accord with all decisions. The test used by the trial judge was correct. The standard of review used by the appeal court was correct.

The contention of Petitioner that the sole basis for the granting of the father's surname to the child was unconstitutional gender-based discrimination against mothers is incorrect, rather, it was based on

many factors all of which led to the conclusion that it was in the best interest of the child that she bear the surname of Reichenbach. Hence, there is no special or important reason for certiorari, which should be denied.

Respectfully submitted,

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PETITIONER'S REPLY BRIEF

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November 26, 1985

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PETITIONER'S REPLY BRIEF

Respondent contends that "Petitioner does not attack the standard of review used by the Maryland Court of Appeals as being incorrect, unlawful or inappropriate." (Brief in Opp., p. 6.) That statement is wrong; Petitioner expressly contends that the standard employed by the

Court of Appeals unconstitutionally discriminates against women.

Although the Court of Appeals stated that it was applying "the best interests of the child" test, the most cursory examination of its opinion clearly reveals that the Court grafted on to that test a standard which could only be met by giving the child the father's name. Thus, the only reason advanced by the Court for its decision to give the child her father's name was the likelihood that, if she did not bear her father's name, "a lot of people may well infer this child was born out of wedlock," an inference which would be "embarassing" for the child. (Petition, pp. 17-18.) Obviously, under that ruling, no mother will ever be able to give her surname to her child.

Palmore v. Sidoti, ___ U.S. ____, 104 S. Ct. 1879 (1984), teaches that a

"best interests" invocation cannot disguise an unconstitutional preference. Because the Court's decision unconstitutionally discriminates against women, Petitioner prays that her Petition be granted.

Respectfully submitted,

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